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CURRENT TOPICS

Licensing Applications

AN important change has been made by the Licensing Act, 1953, in regard to service on the police of notices of application for new licences, transfers of licences and ordinary and special removals. Formerly, by the Licensing (Consolidation) Act, 1910, ss. 15 and 25, notices had to be served on the superintendent of police of the district. By the Licensing Act, 1953, Sched. III, notices must now be served on "the chief officer of police," defined under s. 165 as the Commissioner of the City Police in the City of London, the Commissioner of Police for the Metropolis in the Metropolitan Police District and in any other police area the chief constable for that area. "Police area" is not defined in the Licensing Act but by s. 33 of Sched. III to the Police Act, 1890, it is limited to counties and not police districts of a county. It therefore follows that service on a superintendent may no longer be good, and applicants who have not served the chief constable (or the Commissioner in the City of London or the Metropolitan Police District) may have to start afresh in time for the second day of the annual licensing meeting in March (see Paterson's Licensing Acts, 61st ed., p. 341; 62nd ed., pp. 1134–5). In *R.* v. *Riley* (1889), 53 J.P. 452, notice was served on an inspector at one of the police stations in a police district, but this station was not the residence or the principal office of the superintendent. The notice was served on the last day which would enable it to be given twenty-one days before the licensing meeting and the superintendent did not in fact see it until the following day. It was held that the service was invalid and that the notice should have been served on the superintendent at his residence or principal place of business, but the court did say that the Act then in force did not require personal service on the superintendent. This later statement does suggest that there might be grounds for an argument that service on the superintendent under the Licensing Act, 1953, would be good if it was established that the chief constable in fact saw the notice before the twenty-one days prior to the licensing meeting had begun to run.

Merchandise Marks Act: False Trade Descriptions

IN a statement issued on 26th January, the Board of Trade draw the attention of traders to the coming into force of s. 1 of the Merchandise Marks Act, 1953, on the 1st February, 1954. The whole of this Act, which strengthens the law relating to merchandise marks and increases the penalties for offences, is, therefore, now operative. Under the Merchandise Marks Acts, 1887 to 1953, it is now an offence to apply a false or misleading trade description to goods or to sell goods to which a false or misleading trade description is applied. "Trade description" means any description, statement or other indication direct or indirect as to the number, quantity, measure, gauge or weight of any goods; as to the standard of quality of any goods according to a classification commonly used or recognised in the trade; as to the fitness for purpose, strength, performance or behaviour of any goods; as to the place or country in which any goods were made or produced; as to the mode of manufacturing or producing any goods;

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as to the material of which any goods are composed; or as to any goods being the subject of an existing patent, privilege or copyright. Mr. ROGER DIPLOCK, secretary of the Retail Trading Standards Association, wrote in *The Times* of 26th January that "In the intervening six months since the Merchandise Marks Bill received the Royal Assent there has been a good deal of heart-searching in various industries—not least in the textile industry—as to whether a large variety of descriptions which had never been misleading to traders could be judged as misleading to the public." After referring to current misuse of words like "wool," "silk," "oak," and "mahogany," he concluded by quoting from a recent judgment by LORD GODDARD: "The fact that this description may be known to the trade and be commonly used by them or may be known to the Ministry of Food is, in my opinion, immaterial. If the description is false, it matters not whether other people use it or how generally it may be used . . ."

The Late Mr. Henry Gibson Rivington

THE friends and the ex-pupils of the late Mr. HENRY GIBSON RIVINGTON—they are synonymous in that the former include all the latter—learned with grief of his death on 25th January, at the age of 81. Besides being a great scholar—his First in Greats achieved when he was at Worcester College, Oxford, proved it—he was also a lawyer with a well-deserved reputation for producing standard textbooks, for lecturing, and for generally conducting the tutorial business of the famous law tutors, Gibson and Weldon, so ably that many thousands of lawyers, as Mr. William F. Hood wrote in *The Times*, have reason to be grateful to him. "Rivington," he continued, "whose speciality was conveyancing and the law of real property—dull and difficult subjects to teach and learn—had the happy gift of being able to impart his great knowledge with lucidity, yet in such simple terms that the dullest of his students came away from his classes with the sense of something gained and with their interest aroused and sustained . . . I, for one, mourn the passing of a great scholar and a very courteous and kindly soul."

The Shaftesbury Lecture

WE have been favoured by the Shaftesbury Society (Ragged School Union, 1844) with a printed copy of the Seventeenth Shaftesbury Lecture, delivered on 1st October, 1953, by the Rt. Hon. Sir ALFRED DENNING on "The Christian Approach to the Welfare State." In an introduction, the chairman, Mr. ALAN W. BROWN, observed that Sir Alfred was President of the Lawyers' Christian Fellowship, an association of men and women who seek to apply Christian principles to the practice of the law. Sir Alfred defined the Welfare State as "a country where no one is dependent on the charity of others; where it is not the duty of private individuals but the duty of the State to provide for the people whatever is necessary for their welfare; and where it is the duty of the State to secure for every citizen, so far as possible, full opportunity for the development of his talents, unhampered by poverty or ill health." Lord Justice Denning said that National Insurance assures a free medical service and freedom from want, but "incentive, opportunity and responsibility" must not be stifled by it, as LORD BEVERIDGE had said in his Report in 1942, and it must not, as Sir Alfred added, "dry up the springs of Christian charity and help to breed selfishness and ingratitude." Sir Alfred referred to dangers of which signs had already been observed by others, including Lord Beveridge and the British Medical Association, that the insurance principle may be forgotten, that doctors' standard of service may worsen, and that in the hospitals "love is replaced by efficiency; inspiration is replaced by system." He said that it was a matter for sincere gratitude that the Homes of the Shaftesbury Society are still run by the Society as a voluntary society. The lecturer pointed out that nationalisation can bring in its train more evils than it was hoped to avoid if those in the industry seek their own advantage without regard to the welfare of the people. He also referred to the temptation of the lawyer conducting legal aid cases to persuade himself to fight on rather than settle. It is a fact, he said, that far more divorce cases are being contested in the courts at length than there used to be. "It is a perverse sense of values," he commented, "which leads the Welfare State to spend so much money on divorce suits . . . whereas it pays little attention or, at any rate, little money, to efforts to . . keep the family together." He said that voluntary service and State service must go hand in hand. It was the Christian spirit that produced the Welfare State, and only a "return to the faith of our forefathers" can save us.

Adoption Abuses

THE National Council for the Unmarried Mother and Her Child, in their annual report, published on 30th January, urge that legislation be passed to ensure that, except in cases of emergency, unmarried mothers shall not be persuaded to part with their children at a time when they are psychologically unfitted to decide whether to do so. The report states that the spirit of the provision in the Adoption Act, 1950, that consent to adoption is not to be given until the child is at least six weeks old, is not always being observed. In a number of cases either an adoption society or some other adviser arranges for the child to be placed with foster parents as soon as the mother leaves hospital. Consequently, she has no time for psychological adjustment to motherhood and her decision at the end of six weeks is prejudiced by a *fait accompli*. The numbers of illegitimate maternities among mothers of 15 years or less increased by only three in England, Wales and Northern Ireland between 1941 and 1950. In the 14-year-old age group, for which the figures include the years 1940 and 1951, there has been a downward trend, with 211 cases in the first half of the period and 207 in the second.

A Course on Criminology

THE International Society of Criminology, with the support of U.N.E.S.C.O., is holding a course on criminology in London from 24th March to 13th April, 1954. The lectures, which are to be followed by discussions and suitable visits to institutions, will be in English, and will be given by the most eminent experts in their own spheres. They include Dr. DENNIS CARROLL, Dr. HERMANN MANNHEIM, Sir LIONEL FOX (Chairman of the Prison Commission), Mr. BASIL HENRIQUES, Dr. EDWARD GLOVER, and many others, including experts from abroad. Subjects such as "Persistent Offenders in Prison," "Experience in Open Prisons," "Borstal Treatment," "Approved Schools," "Electro-encephalographic Studies of Offenders," and "Psychiatric Treatment" should attract practitioners in the criminal courts who are anxious to learn how their function fits into the general system of criminal treatment. Those wishing to attend the course should apply before 14th February, 1954, to "Fourth International Course in Criminology," c/o I.S.T.D., 8 Bourdon Street, Davies Street, London, W.1. Specially experienced workers in such fields as law, and holders of a degree or diploma in law or one of the sciences contributing to criminology, and those with special knowledge equivalent to such qualifications are expressly invited. The fee for the course is £7.

IMPRISONMENT AND THE DISCHARGE OF A DEBT OR LIABILITY

In this article it is proposed to examine the effects of imprisonment on the debt or liability for which it is imposed, dealing in turn with civil debts, fines and payments under maintenance, bastardy and affiliation orders.

As regards civil debts, the Debtors Act, 1869, s. 5, proviso (2), says: "No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place." The effect of this proviso is stated by Archibald, J., in *Evans* v. *Wills* (1876), 1 C.P.D. 229, at p. 235, as follows: "But for that proviso, the imprisonment would have operated as a satisfaction of the debt against the goods of the debtor."

As regards the effect of imprisonment on non-payment of a fine, there does not appear to be any direct authority. However, in *Vernon* v. *Watson* [1891] 2 Q.B. 288; 56 J.P. 85, under s. 16 (9) of the Friendly Societies Act, 1875, a penalty was imposed upon the respondent for misapplying moneys of a friendly society, and, an order to repay such moneys having been made against him, he was imprisoned on default in paying the penalty and in repaying the moneys. The Court of Appeal held that the order to repay the moneys misapplied by the respondent, and the imprisonment, which was execution upon it, were a bar to an action subsequently brought by the society for the recovery of the same moneys. Fry, L.J., says at p. 292: "It follows that the imprisonment is a satisfaction not only of the criminal but of the civil remedy; and the plaintiffs, having obtained satisfaction of their civil remedy, cannot afterwards bring another action."

When these principles are applied to the decisions on maintenance, bastardy and affiliation orders, the position at first sight appears contradictory. In the recent case of *R.* v. *Miskin, etc., Justices; ex parte Young* [1953] 1 Q.B. 533; 97 Sol. J. 136, the Divisional Court held that a husband who is imprisoned for non-payment of maintenance arrears is discharged from liability for those arrears (at p. 539). In *R.* v. *Richardson* [1909] 2 K.B. 851, at p. 856, Lord Alverstone said: "It is not necessary to decide whether the punishment of imprisonment under these circumstances wipes out the defendant's liability for the past arrears, although I am inclined to think that it does."

On the other hand, in *Jinks* v. *Jinks* [1936] 3 All E.R. 1051 a wife obtained against her husband an order for restitution of conjugal rights, followed by an order for maintenance, and an order for costs against the husband. In default of payment of these costs an order was made for payment within fourteen days, and on further default the husband, who had considerable means, was committed to prison. The wife applied for the appointment of a receiver of certain property belonging to the husband and for an order that the receiver should use the proceeds thereof in payment of the arrears of maintenance and costs. An order was made for the appointment of a receiver and for the payment out of the proceeds of the property of the arrears of maintenance, but not of the costs. On appeal by the wife, the Court of Appeal held that, in accordance with the Debtors Act, 1869, s. 5, proviso (2), the fact of imprisonment does not purge the debt which remains, and that no distinction could be drawn between the debt for maintenance and the debt for costs. The appeal was therefore allowed and a receiver was appointed in respect of the husband's liability for costs, notwithstanding that he had already been committed to prison for non-payment of those costs.

The apparent conflict between these cases can be resolved by consideration of s. 9 of the Summary Jurisdiction (Married Women) Act, 1895, and s. 50 of the Magistrates' Courts Act, 1952. By s. 9 of the Act of 1895 the payment of any sum of money directed to be paid by any order under the Act may be enforced in the same manner as the payment of money is enforced under an order of affiliation, i.e., in the Bastardy Laws Amendment Act, 1872, and other statutes. By s. 50 of the Act of 1952 a sum recoverable on complaint for an order enforceable as an affiliation order is not a civil debt, notwithstanding that payment of it may be ordered by a magistrates' court. When read together, these two enactments would appear to place the enforcement of such orders on the same footing as the enforcement of penal debts, and as a result imprisonment involves the discharge of the liability. Support for this view is to be found in s. 64 of the Magistrates' Courts Act, 1952 (which supersedes s. 54 of the Summary Jurisdiction Act, 1879), where imprisonment is prescribed as a means of enforcing sums adjudged to be paid whether by conviction or order of a magistrates' court.

Imprisonment therefore operates to discharge the debt or liability in the case of a fine or orders made in bastardy, maintenance or affiliation cases, but not in a civil debt.

R. M. H.

A Conveyancer's Diary

A "PRIVATE" EDUCATIONAL CHARITY?

The case of *Oppenheim* v. *Tobacco Securities Trust, Ltd.* [1951] A.C. 297 is well known as establishing beyond doubt the principle that a trust for the education of a limited class of persons (in that case, the children of employees of a limited company) is not a valid charitable trust, the beneficiaries not being such a section of the public as to satisfy the requirement that a charitable trust must be a trust for the benefit of the public. The anomalous character of the "poor relations" cases, and of the distinction in this respect between trusts for the relief of poverty and all other charitable trusts, was recognised in this case, and it is clear that the rule which in the past brought the former class of cases within the ambit of charitable trusts will not now be extended, and similarly the position of trusts for the relief of poverty will continue to occupy the peculiar position which they now fill in the law of charitable trusts.

It certainly looked, therefore, as if the principle on which the *Oppenheim* case was decided was pretty rigid. But there is no limit to human ingenuity, and the recent decision in *Re Koettgen's Will Trusts* [1954] 2 W.L.R. 166 (also reported shortly at p. 78, *ante*) indicates the existence of a method which, for many practical purposes, gets round most of the difficulties of the *Oppenheim* rule.

The testatrix had a family connection with an old-established firm of city merchants, whose principal business was the export of general merchandise to foreign countries. At the date

of the application the firm (or, more strictly, the company, for it had been incorporated under the Companies Acts) had a staff of thirty-six persons engaged in clerical duties, and there was evidence that the firm's activities made the knowledge of foreign languages among members of its staff an advantage. This was the background to the testatrix's residuary gift, which was the subject of the trust in connection with which the case has been reported. The testatrix made her will in 1946 (before the *Oppenheim* decision, be it noted) and by this she constituted her residuary estate a trust fund " for the promotion and furtherance of commercial education " according to the scheme which she then went on to define. Under this scheme the net income of the fund was to be used for the purpose of assisting any persons of the specified description, in effect, to receive a training in such subjects as shorthand, typewriting, banking, Stock Exchange routine, commercial law and foreign languages, and the persons eligible as beneficiaries were to be persons of either sex who were British subjects, and who were desirous of educating themselves for a higher commercial career, but whose means were insufficient or would not allow of them obtaining such education at their own expense. Finally, the testatrix stated that it was her wish that in selecting beneficiaries the trustees should give a preference to any employees of the testatrix's family firm or any members of the families of such employees, but that failing a sufficient number of beneficiaries under such description the persons eligible should be any persons of British birth as the trustees should select, provided that the total income to be available for benefiting the preferred beneficiaries should not in any year exceed 75 per cent. of the total available income.

The question was whether this scheme constituted a valid charitable trust. Two important admissions were made during the argument. First, it was admitted by the trustees of the fund that the scheme did not constitute a trust for the relief of poverty, so that, if the trust could be upheld as a valid charitable trust at all, it had to be so upheld on the ground that it was a trust for the advancement of education. The reference in the will to insufficient means as a qualification of benefit can therefore be wholly disregarded in examining the *ratio decidendi* of this case. Secondly, it was admitted on behalf of the remainderman that the term " commercial education " in the will connoted a valid charitable purpose. Furthermore, in construing the terms of the scheme the learned judge (Upjohn, J.) held that the testatrix's expressed wish that in selecting beneficiaries the trustees should give a preference to employees of the family firm and members of the families of such employees should be interpreted as an imperative direction. The precatory nature of the testatrix's language in this part of the will did not, therefore, influence the decision, which would have been the same if the testatrix had expressed her wish that such a preference should be given in the form of a mandatory direction, such as is more commonly employed by the draftsman when he sets out the terms of a trust.

The scheme was attacked on the ground that the provision as to 75 per cent. of the income of the trust fund being made available for the preferred class (which was, substantially, a class similar to the class of the children of employees of a company considered in the *Oppenheim* case) deprived the scheme of its character as a charitable trust because the class was too narrowly defined to import into the trust the degree of public benefit requisite to a trust before it can be upheld as a good charitable trust for the advancement of education. The validity of the scheme as to the remaining 25 per cent. of the annual income was not challenged.

This view was not accepted by Upjohn, J. In his judgment the primary class of eligible persons under the scheme as a whole was not the class defined as the employees of the firm and members of their families, but all persons of either sex who (in the testatrix's words) were British born subjects and were desirous of educating themselves for a higher commercial career but whose means were insufficient or would not allow of their obtaining such education at their own expense. That was the primary class, and this class was, clearly, defined broadly enough to satisfy the requirement of public benefit within the principle of the *Oppenheim* case. When the trustees came to make their selection of beneficiaries, they had to prefer the narrower class, and as to that class, there might in some years be sufficient numbers of it to require the application of 75 per cent. of the income of the trust fund for their benefit, but in other years there might not. In time, the firm might cease business, and in that event the income of the whole trust fund would have to be applied for the benefit of the primary class, viz., British born subjects of limited means desiring a commercial education. In these circumstances it could not be said that 75 per cent. of the income of the fund was reserved for a class too narrowly defined to satisfy the rule. " If," Upjohn, J., said in concluding his judgment, " when selecting from that primary class the trustees are directed to give a preference to the employees of the company and members of their families, that cannot affect the validity of the primary trust, it being quite uncertain whether such persons will exhaust in any year 75 per cent. of the trust fund."

The conclusions which I think may legitimately be drawn from this decision are most interesting. First, the contest in this case was around the 75 per cent. of the income of the fund which was made available by the scheme of the trust for the preferred class, and in respect of this proportion of the income of the fund the validity of the testatrix's trust was upheld, if one may say so, 100 per cent. It seems to me that if the testatrix had omitted the proviso as to the limit of 75 per cent. of the income, the result would have been the same. Secondly, there was nothing peculiar about the preferred class in this case; it was simply a class which, under the *Oppenheim* principle, was too narrowly defined by itself to satisfy (so far as a trust for the advancement of education is concerned, or indeed any trust except a trust for the relief of poverty) the rule of public benefit. If the class had been a class of the relations of the testatrix, as, for example, in *Re Scarisbrick's Will Trusts* [1951] Ch. 622, the result would again, I conceive, have been the same.

This would seem to open the door to all sorts of interesting possibilities. As I have said so often in the past in this " Diary," the advantages of a charitable over a non-charitable trust in regard to taxation are at the present time overwhelming, and if a trust for the education of the settlor's descendants can be set up as a valid charitable trust, as the decision in *Re Koettgen's Will Trusts* suggests may be possible, one of the questions which is nowadays not infrequently asked of the draftsman and conveyancer will be answered to the satisfaction of the client. To those who have not considered the possibility, the idea of dressing up what is in essentials a private trust as a charitable trust may be somewhat startling, and it may be objected that some at least of the controlling influences to which charitable trusts, as trusts for the benefit of the public, are subject are ill-suited to what is really a domestic affair. But not all charitable trusts are under the periodical control of the Charity Commissioners, and the lawyer who knows his way about the subject will be able to advise how their jurisdiction can be ousted. And, of course, it is not necessary for a charitable trust to be

expressed to endure in perpetuity; the capacity so to endure is a privilege accorded to charitable trusts, but it is not a requirement of their creation. Properly understood and carefully applied, the decision in this case may do something to arrest the decline of the traditional standards of upper and middle class education in this country, to which the chief education officer of the North Riding of Yorkshire (as was reported in this journal last week) recently drew attention.

"A B C"

Landlord and Tenant Notebook

GRANT TAINTED BY ILLEGALITY?

IN *Mason and Another* v. *Clarke* [1954] 2 W.L.R. 48 (C.A.) (*ante*, p. 28) the court held, as described in last week's "Notebook" (*ante*, p. 72), that a tenant farmer had not infringed the terms of a "reservation" of game by permitting or countenancing the destruction of rabbits in so far as the interests of good farming made such destruction advisable, and that if he had had to rely on the Ground Game Act, 1880, he would be protected by its provisions. The destruction had been carried out by ferreting and by gassing and this left for consideration two other complaints by the landlords and the shooting tenant: the defendant had interfered with snares laid by the latter, and had on one occasion ordered him off the land. As far as the snares were concerned, the defendant's conduct was held to be justifiable because they were laid in a field where his sheep grazed. There remained the ordering off incident, and to meet this complaint the defendant availed himself of a circumstance which, it was held, went to the very root of the plaintiffs' rights (and which, indeed, in itself afforded him an answer to the whole claim).

The first plaintiff, the shooting tenant, after agreeing the terms orally, had paid the second plaintiffs, the landlords, £100 for one year's rabbiting rights (those rights being the second plaintiffs' by the tenancy agreement). The evidence showed that the second plaintiffs' manager had a strong personality and had instructed the landlords' agent to make out a receipt describing the £100 as a contribution towards bailiff's wages on their estate. A corresponding entry was made on the counterfoil of the receipt. The first plaintiff accepted the receipt without objection; in his evidence he said that he saw that it was a receipt for £100 and thought that what the manager did with the money was no concern of his. He did not take it with him when he first called on the defendant and he gave the defendant a wrong account of it, that is to say, he said he had paid £100 and had a receipt for it giving him authority to catch rabbits on the estate. Ultimately he produced the actual receipt to the County Agricultural Executive Committee's pests officer, and, as Denning, L.J., said, there could be little doubt that that functionary told the defendant what it contained and thus enabled him to draw it to the notice of the court.

At first instance the effect of the defendant's so drawing the receipt to the notice of the court was very different from what he had intended it to be. Croom-Johnson, J.'s reaction was, just for that, to award the plaintiffs punitive damages.

In the Court of Appeal the reasoning was as follows: (i) In law a *profit à prendre* can only be granted by deed. (ii) Having no deed, the shooting tenant had to rely on equitable rights. (iii) The inference from the falsity of the receipt was (Denning, L.J.) that it was so made out with a dishonest motive; that, linked with the payment, was dishonest intent by the lessors to facilitate a fraud on the Inland Revenue, the furtherance of which dishonest intent was promoted by the form of the receipt which the first plaintiff was content to accept (Romer, L.J.). (iv) It followed that, though he had paid for the rights and thus would ordinarily be qualified for a decree of specific performance to enforce his rights, no such decree would be granted by any court of equity when all that he could produce was such a strange and suspicious receipt (Denning, L.J.); no court of conscience would afford him any recognition or relief whatever in relation to a transaction which involved a payment so manifestly tainted (Romer, L.J.). (v) The first plaintiff had no better title to be on the land than a poacher (Denning, L.J.); he was in no better position than a trespasser (Romer, L.J.).

When a plaintiff is awarded, at first instance, damages which exceed an amount which would put him (as far as money can) in the position in which he would have been if the wrong complained of had not been done to him, and is then told by an appellate tribunal that he is not entitled even to that lesser amount, there does seem to be occasion for critical examination of the position.

What I, with the greatest respect, find somewhat puzzling about the decision is the retrospective effect given to the false or suspicious receipt. The sequence of events is, in my submission, of some importance in such circumstances. Granted that the taint of illegality is capable of spreading, it cannot do so before it appears; a child infected with measles and allowed to attend school in that state may cause many others to suffer from measles, but their illnesses are not ante-dated. "*Ex turpi causa non oritur actio*"; I would suggest that there is something to be said for the proposition that the first plaintiff in *Mason* v. *Clarke* had untainted rights before the receipt was made out and "accepted" by him. I do not think that Denning, L.J., meant, when he said "If he was lawfully authorised by the landlord company to go rabbiting on the land, then, of course, he could go, but the difficulty is to see that he was lawfully authorised, when the only thing he could himself produce was this false receipt," that the case would be one of specific performance of a written agreement not under seal; the learned lord justice himself says later: "It seems to me that Mason cannot be in a better position by not producing the receipt than he would by producing it," and this accords with Romer, L.J.'s "It is said (in reliance on *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9 (C.A.)), that, as he had paid for the rights and the agreement was acted on, equity would recognise them as fully as though they had been validly created at law."

By way of illustrating the suggested point I would invite consideration to two other possibilities: suppose that (*a*) the first plaintiff had not wanted and had not been given any receipt at all, or (*b*) had been given an unqualified receipt, mentioning neither the rabbiting nor the bailiff's wages, and had some time afterwards—after the incident when the defendant ordered him off the premises—been told by the forceful manager that the £100 had been applied towards the estate wages account, and would he mind if words to that effect were added to the statement acknowledging the payment? In my submission, the case is distinguishable from one in which a tenant, falling in with his landlord's suggestion that documents be made and used which will deceive the valuation authorities in the matter of rateable

value, afterwards falls out with the landlord and withholds rent (*Alexander* v. *Rayson* [1936] 1 K.B. 169 (C.A.)).

Admittedly there were facts, such as the absence of the forceful person from the witness-box, which might invite the inference that there was a fraudulent intent shared by both plaintiffs from the first; but it does not appear that that inference was actually drawn. It looks rather as if the court considered the making of the payment and the making out and handing over of the receipt all one transaction, but that the first plaintiff might have improved his position by registering some protest. A failure to protest (though how and in what terms the remonstrance should be made has not been gone into) was found to have equally far-reaching results in *Maley* v. *Fearn* [1946] 2 All E.R. 583 (C.A.), an action for possession on the ground that the defendant was an unlawful sub-tenant of a deceased protected tenant. A rent book issued to the deceased was produced and opposite the page on which entries were made "terms of tenancy" were prominently stated, the first being "The tenant must not sub-let or let apartments without the written consent of the owner or agent . . ." The rent book was not the first which had been used, but, said Morton, L.J., if this term had not formed part of the original terms of the letting, Mrs. B (the mesne tenant) would have objected to its presence in her rent book. The inference may seem a little startling to practitioners familiar with such lettings, even if there was evidence that no objection had been voiced. But the fact that the rent book was not the first one used may, assuming that it was not stamped, have relieved the court of its task of considering whether in this case (as in *Mason* v. *Clarke*) sums due to were not being withheld from the Revenue. It is doubtful whether it should have to, as it was the terms and not the existence of Mrs. B's tenancy which were in issue. *Turner* v. *Power* (1828), 7 B. & C. 625, would have been authority for the proposition that the document, if not stamped, was not admissible. Perhaps it was stamped!

R.B.

HERE AND THERE

LORD SIMON'S LAST CASES

In all three of the decisions delivered by the House of Lords last week, Lord Simon had presided at the hearing before the Appellate Committee and had prepared opinions. He died before the time came to make them public and so, since the opinions of the Law Lords are technically and in constitutional theory speeches delivered in the House designed to influence the ultimate voting on the question to be put to it, his opinions in these cases were doomed to die with their author. One alone was reprieved, for Lord Normand, who had intended merely to concur in it, adopted the orphan and delivered it as his own. Both he and Lord Reid availed themselves of the opportunity to pay a sincere tribute to Lord Simon's wise leadership in the discussions of the Law Lords and to his contributions to the development of Scots law. (All three of the appeals were from the Court of Session.) It is curious that neither Lord Normand nor Lord Reid should have recalled that Lord Simon, Welsh on his father's side, English on his mother's, was partly educated in Scotland, having won in 1887 the top entrance scholarship to Fettes College, and in after life he would recall its splendid situation "from which Edinburgh Castle and Arthur's Seat provide a noble skyline—as fine as that of St. Andrew's viewed at sunset from the Old Course." It was typical of the extraordinary variety in this extraordinary man that his recollections of the school which first fostered that enthusiasm for the Greek and Latin classics which burnt so brightly in him all his life should thus be linked in his recollections with that game in which, one had the impression, prowess gave him more pleasure than almost any of his achievements. He seemed prouder of having been Captain of the Royal and Ancient at St. Andrews than of having been Lord Chancellor. The side of him that could glory in his Captain's red coat but take the Woolsack for granted was one of the most engaging things about him. That he should be rather vain of his golf, of his chess, of his French, of his memory for cricket scores, of his ability to do two or three things at the same time was something which linked him with ordinary humanity, for vanity in little things is a great antidote to the sin of pride. Things of which he might well have been proud he passed over in modest silence—his flights over the enemy's lines in the first World War, for instance, when as a distinguished public figure and a major on the staff of the Royal Flying Corps, he was under no obligation to risk his life in the crazy machines of the period.

ENIGMATIC FIGURE

That Lord Simon was an enigmatic figure is amply demonstrated by the extraordinary variety of the estimates of his character published since his death. A master of courtesy, of charm, ever reasonable, a strict observer of all the proprieties, he yet frequently made on others an impression of chilling isolation, for wherever he went he was king of his company—not a surprising circumstance with one who was certainly among the half-dozen outstanding public men of his generation, but a thing heightened and emphasised by a self-consciousness from which he could never escape. It was a great blessing for such a man that he never experienced the decay of his faculties and that, indeed, almost to the end, he was at the height of his powers. After he ceased to be Lord Chancellor an almost imperceptible change came over him. That unerring sense of relevance which had been one of his most striking characteristics in guiding the deliberations of the Law Lords sometimes relaxed its grip a little. In conversation he became rather more reminiscently talkative than formerly. His formerly imposing carriage was marred by arthritis when he stood, though seated, rosy and alert, he seemed physically scarcely impaired by advancing years, and at the end of the Christmas vacation he still seemed to have many active years before him. This month he would have been eighty-one. Instead, he has joined those other two who with him formed a constellation of genius in the Oxford of the nineties, Hilaire Belloc and F. E. Smith.

REALLY CHAMPAGNE?

Whatever one may think of the merits or demerits of the case for reprieving Michael Davies, convicted of the murder on Clapham Common, after the House of Lords had dismissed his appeal, no one could help feeling sorry for him, particularly those who saw him looking thin and pale at the last public stage of his ordeal. But mere feelings of sympathy have very little to do with the merits of the course to be taken in such a case. Indeed, if the suspense was prolonged, it was prolonged not by any callousness on the part of the Crown but by the devoted, and ultimately successful, efforts of his friends and advisers. Nobody will be so harsh as not to wish him in the end a new life and happiness. But it must be confessed that the opposition to reprieve in such cases, carrying with it the hope of possible release in less than ten years, is made rather easier by some of the reports printed

in the Press. Experienced newspaper readers know the conventions of Fleet Street well enough not to accept as objective fact, without mental reservations, all that they are told by reporters and correspondents. Therefore it may well be that some qualification should be read into the following account of the proceedings in the Davies' home after the reprieve was announced. "Then someone produced a bottle of champagne and the toast was 'To Michael—and a quick release'." Maybe the actual scene was very different. Maybe it was a reporter who produced the champagne and the toast. But not so very long ago it would have been far more likely that a household similarly situated would have fallen on its knees in thanksgiving for a great deliverance, closing what, in any view, had been a great tragedy. Instead, the report suggests a mood of impenitent frivolity. One can only hope that it contained some element of mistake or distortion. (As to that quick release, seven years is not out of the question. That was the time for George Pugh, aged 17, who murdered his girl near Wolverhampton in 1930.)

RICHARD ROE

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Successful Assisted Litigants

Sir,—In your issue of the 16th January, 1954, Richard Roe, writing under the heading "Here and There," reported that a Queen's Bench judge had stated to him that he was "far from satisfied with the implications of the official statistics said to indicate that 70 (or was it 80?) per cent. of the state-aided litigants were successful; this might well be so if you counted undefended divorces, but in normal litigation the figure would be more like 5 per cent."

If the judge is correctly reported, his guess about the figures is so far removed from the facts that I venture to think that it is in the public interest as well as that of the profession that the actual statistics for the last complete year in respect of which the Council have reported to the Lord Chancellor should be published. The results of legally aided litigation are reported to The Law Society and the figures for last year, excluding the matrimonial cases, show that legally aided litigants were successful in the following percentage of cases (column 1 includes as "successful" cases settled without trial and column 2 only those tried):—

	%	%
Court of Appeal	53	53
Chancery Division	89	80
Queen's Bench Division	86	71
Probate, Divorce and Admiralty Division, non-matrimonial	93	89
Divisional Court, Queen's Bench	63	62
Divisional Court, Probate, Divorce and Admiralty	62	62

To complete the record, during the same period of twelve months, out of 22,619 cases, the assisted person was successful (including settlements) in 20,583, in 14,029 of which the assisted person was awarded costs or damages or both. In some instances both parties were assisted, but nevertheless the figures show that 91 per cent. of the assisted cases were successful in all types of action.

T. G. LUND,
London, W.C.2. Secretary, The Law Society.

The Legal Advice Scheme

Sir,—Richard Roe, in your edition of 16th January, notes the extremely low estimate of a Queen's Bench judge that only 5 per cent. of legally aided cases other than undefended divorce cases are successful, and the judge's suggestion that the defendant should have the option of arguing the case before the legal aid committee before delivery of briefs. This is surely coming too near to conferring judicial functions on a committee which has no judicial status. There would have to be a radical alteration in the Legal Aid Scheme before such a suggestion could be adopted, whereas a partial solution of the difficulty has already been incorporated in the Legal Aid and Advice Act of 1949, namely, provisions for legal advice to be available to applicants before they embark on litigation.

On the grounds of economy, the legal advice part of the scheme has never been brought into operation. If the Legal Advice Scheme were working, a number of applications would never reach legal aid committees and many of those which did would be far better presented to the committees so that they could form a sounder judgment of the merits than is at present possible.

ROBERT EGERTON.
London, W.C.2.

POINTS IN PRACTICE

Rent Restriction—SERVICE TENANT TAKING IN LODGERS RENT-FREE IN RETURN FOR DOMESTIC SERVICES—WHETHER PROTECTED TENANCY CREATED

Q. Messrs. *A* & Co., Ltd., have a caretaker *B*, living in separate dwelling accommodation or rooms within the curtilage or yard of their factory premises, which he occupies rent-free as a service tenant. *B* is a bachelor, and owing to his age and hours of duty or work it has become necessary for him to have someone to look after him and cook his meals, etc. He has arranged, with the consent of his employers *A* & Co., for a Mr. and Mrs. *C* to come and live with him free of charge or rent in consideration of Mrs. *C* looking after him and acting in the capacity of housekeeper. Mr. and Mrs. *C* will not bring any furniture into the premises. Mr. *C* is employed by another firm (not *A* & Co.) at a weekly wage. *A* & Co., wish to avoid such arrangement resulting in Mr. and Mrs. *C* becoming in any way protected tenants or occupiers so as to restrict or prevent *A* & Co., being able to obtain possession of the premises in the event of their caretaker or service tenant *B* dying, leaving or being discharged from their employment, and they suggest that Mr. and Mrs. *C* (who are quite willing to do so) should sign and give to *B* an appropriate memorandum acknowledging that they are liable to leave on short notice and that they are not sub-tenants, but merely living there rent-free in consideration of services rendered. Will the giving effect to the arrangement for Mr. and Mrs. *C* to live with the service tenant *B* under the terms mentioned constitute them in any way protected tenants or occupiers? Would the signing by Mr. and Mrs. *C* of any memorandum or acknowledgment as suggested be of any use or effect?

A. The arrangement could not, in our opinion, result in conferring any right to retain possession on Mr. and Mrs. *C* (or either of them). (1) Assuming that they are to have exclusive possession of some room or rooms, there is no intention to create a tenancy: *Errington* v. *Errington* [1952] 1 T.L.R. 231 (C.A.); *Cobb* v. *Lane* [1952] 1 T.L.R. 1037 (C.A.); and see 96 SOL. J. 67, 424. (2) If there were a tenancy it would be (*a*) "furnished" so that *Prout* v. *Hunter* [1942] 2 K.B. 736, would apply, once *B*'s interest ceased, and (*b*) effective between *B* and the *C*'s only, *B* having no right to grant a tenancy (*Dudley and District Benefit Building Society* v. *Emerson* [1949] Ch. 707 (C.A.)), and (*c*) even if *B* were a tenant, carved out of an unprotected tenancy: *Knightsbridge Estates Trust, Ltd.* v. *Deeley* [1950] 2 K.B. 228 (C.A.). In our further opinion, the suggested memorandum would be (1) superfluous and (2) if anything, potentially dangerous: see *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386 and 96 SOL. J. 424.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

WILL: BLIND TESTATOR: KNOWLEDGE OF CONTENTS

Christian *v.* Intsiful

Lord Porter, Lord Oaksey, Mr. L. M. D. De Silva
14th December, 1953

Appeal from the West African Court of Appeal.

The testator, John Intsiful, who died on 18th June, 1950, aged 93 years, had in 1944 handed a document to one Arthur, who had been a solicitor's clerk but was not then acting on behalf of a solicitor, and asked him to type it out for him. That was done, and on 20th November, 1944, the document was signed by the testator and witnessed as his will without it having been read over to him. The will was an elaborate one, leaving to a large number of parties, friends and relations of the deceased various sums of money, and it was never suggested to the solicitor's clerk that he had any such knowledge of the testator's relationships and friendships. The respondent, as plaintiff, claimed in the proceedings out of which this appeal arose, as one of the executors of the will, to have the will established, alleging its due execution on 20th November, 1944. The present appellant (defendant) denied the respondent's claim, averring that on that date the testator was totally blind and could not have executed the will as alleged. At the trial no serious question of due execution of the will or of the testator's testamentary capacity arose, but the dispute centred on the question whether the testator, whose eyesight was admittedly defective, knew and approved of the contents of the will. By Ord. 49, r. 29, in Sched. 3 to the Courts Ordinance, c. 4 of the 1936 Revision, Laws of the Gold Coast: "Where the testator was blind or illiterate, the court shall not grant probate of the will, or administration with the will annexed, unless the court is first satisfied, by proof or by what appears on the face of the will, that the will was read over to the deceased before its execution, or that he had at that time knowledge of its contents." In the Supreme Court of the Gold Coast the trial judge, on 12th March, 1951, found against the respondent's claim, and held that the testator had died intestate. On appeal by the respondent the West African Court of Appeal, on 21st December, 1951, unanimously allowed the appeal, holding that when he executed the will the testator was fully aware of its contents, knew what he was doing and wished to make his last will. The defendant now appealed.

LORD PORTER, giving the judgment of the Board, said that on the whole their lordships were inclined to agree with counsel for the appellant that if it could be shown plainly that the deceased was incapable of reading, that would be sufficient proof of blindness, because the word "blind" in Ord. 49, r. 29, occurred in collocation with the word "illiterate." Apparently, both matters were meant to be put on the same basis, namely, was the man incapable of reading the document which he had signed. In their lordships' view, however, that had not been sufficiently established. Even assuming that the testator were blind, the court, in determining under Ord. 49, r. 29, whether it was satisfied "by what appears on the face of the will . . . that he had at that time"—when the will was made—"knowledge of its contents," was entitled to take cognizance of the elaborate nature of the contents of the will, which was not a document which one who was not intimately acquainted with the testator's life could possibly have devised. Taking that matter into consideration, as well as the question of the testator's eyesight, it appeared that the testator in fact understood what he was doing and intended to do it, and the will was accordingly valid. The appeal would be dismissed.

APPEARANCES: *T. B. W. Ramsay* and *Sirimevan Amerasinghe* (*Burchells*); *James Petrie* and *Gilbert Dold* (*A. L. Bryden and Williams*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 253**

ESTATE DUTY: PARTNERSHIP: GOODWILL

Perpetual Executors and Trustees Association of Australia, Ltd. *v.* Commissioner of Taxes of the Commonwealth of Australia

Lord Oaksey, Lord Morton of Henryton, Lord Reid, Lord Asquith of Bishopstone and Lord Cohen. 19th January, 1954

Appeal from the Full Court of the High Court of Australia.

The principal asset of a testator was his interest in a partnership pursuant to a deed of partnership which, *inter alia*, conferred options on surviving partners to purchase the testator's share in the capital on his death, and further provided that "in computing the amount of purchase money payable on the exercise of any option no sum shall be added or taken into account for goodwill." After the testator's death in 1944 the partners who survived him duly exercised the options conferred on them and the purchase price was ascertained in accordance with the provisions of the deed, no sum being added or taken into account for goodwill. The appellant company, the executor of the testator's will, in its statement of the testator's estate made pursuant to s. 10 of the Commonwealth Estate Duty Assessment Act, 1914–42, gave as the value of the testator's interest in the partnership the price at which, pursuant to the deed, it was obliged to sell it to the surviving partners. Thereafter the respondent, the Commissioner of Taxes, apparently founding on the decision of the High Court of Australia in *Trustees, Executors & Agency Co., Ltd.* v. *Federal Commissioner of Taxation* (*Milne's* case) (1944), 69 C.L.R. 270, made an assessment which included the additional item "proportion of goodwill" in the partnership "£20,000" (the agreed figure if liability was established) on the ground that within the meaning of s. 8 (4) (*e*) of the Estate Duty Assessment Act the testator had a "beneficial interest in property [the goodwill] . . . at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person" and was "deemed to be part of" his estate. The appellant's appeal against the assessment in respect of goodwill was dismissed by the High Court of Australia, and, on further appeal, by the Full Court of the High Court, both courts holding that the case was covered by *Milne's* case, *supra*, the facts of which were in every material respect similar to those of the present case, and in which it was held that within the meaning of s. 8 (4) (*e*) the deceased partner at the time of his death had a beneficial interest in the goodwill which passed to or devolved on the surviving partners. The appellant now appealed.

LORD COHEN, giving the judgment of the Board, said that their lordships thought that *Milne's* case was wrongly decided. In their opinion the whole of the testator's interest in the partnership property, including goodwill, was assessable to duty as being "personal property" within s. 8 (3) (*b*) of the Act, which provided that "for the purposes of this Act the estate of a deceased person comprises . . . his personal property wherever situate . . . if the deceased was at the time of his death domiciled in Australia." That ground had not been argued in either of the courts below. Being so assessable, it necessarily followed that that interest could not be assessable under s. 8 (4) (*e*), which dealt only with property not actually assessable as part of the estate falling within s. 8 (3) but which was to be deemed to form part of the estate. Their lordships were unable to agree with the *dicta* of Hamilton, J., in *Attorney-General* v. *Boden* [1912] 1 K.B. 539, at p. 556, to the effect that where a partnership deed provided that no allowance for goodwill should be made to a partner or his estate on his death his interest in the goodwill did not pass on his death. In such a case as that the deceased partner's interest in goodwill passed with his interest in the other assets to his legal personal representative, and the fact that its value was not to be taken into account in calculating the price receivable by the estate for his interest in the partnership was irrelevant. There would be a declaration that the testator's interest in the goodwill as in the other assets of the partnership was part of his estate within s. 8 (3) and was not to be deemed to be part thereof under s. 8 (4) (*e*), and the matter would be remitted to the High Court to make such order as it might think fit on that footing. Appeal allowed.

APPEARANCES: *Geoffrey Cross*, Q.C., and *J. H. Stamp* (*Crowther and Gray*); *Pascoe Hayward*, Q.C., and *V. M. C. Pennington* (*Coward, Chance & Co.*)

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 171**

INCOME TAX (AUSTRALIA): RECEIPT UNDER WOOL REALIZATION (DISTRIBUTION OF PROFITS) ACT

Commissioner of Taxation of the Commonwealth of Australia *v.* Squatting Investment Co., Ltd.

Lord Porter, Lord Morton of Henryton, Lord Reid, Lord Asquith of Bishopstone and Lord Cohen. 21st January, 1954

Appeal from the Full Court of the High Court of Australia.

The respondents carried on business as growers of wool in Australia during the years 1939 to 1946 inclusive, and the wool

grown by them in those years was compulsorily acquired by the Commonwealth Government pursuant to the National Security (Wool) Regulations, 1939, which were made for the purpose of carrying out an arrangement made between the United Kingdom Government and the Commonwealth Government at the outbreak of the war in 1939, by which the United Kingdom Government purchased all wool produced in Australia, except that required in Australia, for the period of the war and one wool year thereafter, one term of the arrangement being that the two Governments would divide equally any profit arising from the resale outside the United Kingdom of wool purchased under the arrangement. In pursuance of the regulations the Commonwealth acquired the whole of the Australian wool clip in each year during the war, and the suppliers of wool duly received the whole of the compensation moneys to which they were legally entitled under the regulations. Part of the wool purchased by the United Kingdom Government was resold to other countries and large profits resulted from those transactions. To make provision for the disposal of its share of those profits the Commonwealth passed the Wool Realization (Distribution of Profits) Act, 1948, under which, *inter alia*, those who had supplied participating wool—wool obtained from the shearing of live sheep—were each to receive an amount which bore to the amount to be distributed the same proportion as the appraised value of the wool they had supplied bore to the total of the appraised values of all participating wool. The appellant, the Commissioner of Taxation, claimed that the respondents, who had supplied participating wool for appraisement under the regulations and had duly received the appropriate sum on the distribution under the Act of 1948, at which date they were still carrying on business as wool growers, were liable to income tax in respect of that sum under the Income Tax Assessment Act, 1936–49, of the Commonwealth. The majority of the Full Court of the High Court of Australia held that the sum in question was not income within the meaning of s. 25 of the Income Tax Assessment Act, which provided that: " (1) The assessable income of a taxpayer shall include—(*a*) where the taxpayer is a resident—the gross income derived directly or indirectly from all sources whether in or out of Australia . . . which is not exempt income." The Commissioner now appealed.

LORD MORTON OF HENRYTON, giving the judgment of the Board, said that, having regard to the whole history of the matter, the sum received by the respondents pursuant to the provisions of the Act of 1948 must be regarded as an additional payment voluntarily made to them for wool supplied for appraisement, or, if the compulsory acquisition could properly be described as a sale, a voluntary addition made by the Commonwealth to the purchase price of the wool. It was in the respondents' hands a trade receipt of an income nature, and formed part of their assessable income under s. 25 of the Income Tax Assessment Act and was accordingly liable to tax. There were no circumstances which differentiated the payment made in *Ritchie* v. *Trustees, Executors & Agency Co., Ltd.* (1951), 84 C.L.R. 553, which was held to be a receipt of an income nature, from the payment made to the respondents in the present case; and there was nothing in *Perpetual Executors & Agency Co. (W.A.), Ltd.* v. *Maslen* [1952] A.C. 215, which had no bearing on the problem arising in the present case and was in no way directed to income tax questions, to indicate that the Board disapproved of the reasoning or the decision in *Ritchie's* case. Their lordships were in agreement with the reasoning and decision in *Ritchie's* case. Appeal allowed.

APPEARANCES: *Sir Hartley Shawcross*, Q.C., *Heyworth Talbot*, Q.C., *A. D. G. Adam*, Q.C. (Australia), *J. Brunyate* and *F. N. Bucher* (*Coward, Chance & Co.*); *Douglas I. Menzies*, Q.C. (Australia), and *K. A. Aickin* (*Woodroffes*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 186**

COURT OF APPEAL

AGRICULTURAL HOLDING: NOTICE TO QUIT: CONDITIONAL CONSENT: TENANT CHALLENGING LANDLORD'S COMPLIANCE

Martin-Smith *v.* Smale

Denning and Romer, L.JJ. 11th January, 1954

Appeal from Pearson, J.

The plaintiff, Violet Mary Martin-Smith, was the owner of an agricultural holding, known as Northchurch Farm, Berkhamsted, Herts, which was let to the defendant, Cyril Smale. On 12th August, 1952, she gave notice to the tenant to quit the farm on 29th September, 1953, in order that she might herself farm the holding in the interests of efficient farming and good estate management. The Minister gave consent to the operation of the notice. The tenant appealed to the Agricultural Land Tribunal, which gave its consent to the operation of the notice to quit, but in exercise of power conferred by s. 25 of the Agricultural Holdings Act, 1948, they imposed a condition that " the landlord appoints a bailiff approved by the Hertfordshire Agricultural Executive Committee before taking possession." On 1st October, 1953, the agricultural executive committee gave a somewhat qualified approval to the bailiff whom the landlord had appointed. The tenant failed to give up possession on the ground that the landlord had not fulfilled the condition imposed by the tribunal. Pearson, J., gave the landlord leave to sign final judgment for possession. The tenant appealed.

DENNING, L.J., said that it was not open to the tenant to challenge the landlord's compliance with the condition, for he should have gone out on the termination of the tenancy and before any question arose as to the fulfilment of the condition. The condition was imposed by the tribunal in the interests of the community at large and was only enforceable by the Minister; the question as to compliance with it did not affect the operation of the notice to quit.

ROMER, L.J., agreed. The condition which had been imposed by the agricultural land tribunal under s. 25 (5) of the Agricultural Holdings Act, 1948, was valid having regard to the purpose for which the landlord proposed to terminate the tenancy but, in any case, it was not a matter of which the tenant could complain. Appeal dismissed.

APPEARANCES: *Lord Hailsham*, Q.C., and *Gilbert Dare* (*Lucien Fior*); *E. Dennis Smith* (*Sharpe, Pritchard & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 247**

PRODUCTION OF DOCUMENTS CONCERNING " WITHOUT PREJUDICE " NEGOTIATIONS: WHETHER PRIVILEGED

Rabin *v.* Mendoza & Co.

Denning and Romer, L.JJ. 12th January, 1954

Appeal from Croom-Johnson, J.

Before the plaintiff started an action for damages against the defendant firm for negligence in the surveying of a property, his solicitor had an interview with a member of the defendant firm with a view to avoiding litigation. At that interview, which was without prejudice, it was arranged that the defendants should make inquiries to ascertain whether a policy of insurance could be obtained to cover the risk in question; and, as a consequence of the interview, the defendants obtained a report from a surveyor. No settlement having been reached, the plaintiff started proceedings and the defendants in their affidavit of documents claimed privilege from production for the letters and report prepared as a result of the without-prejudice discussions. Croom-Johnson, J., affirming Master Burnand, held that the documents were privileged from production and the plaintiff appealed.

DENNING, L.J., considered the observations of Lord Langdale, M.R., in *Whiffen* v. *Hartwright* (1848), 11 Beav. 111, and said that where, as in the present case, documents came into being under an express or a tacit agreement that they should not be used to the prejudice of either party, an order for production would not be made.

ROMER, L.J., agreed. The documents undoubtedly ought to be discussed in the affidavit of documents by the defendants but no order for production should be made, both on the grounds stated in *Whiffen* v. *Hartwright* and because this was a matter for judicial discretion under Ord. 38, r. 18. Appeal dismissed.

APPEARANCES: *H. Lester* (*Manches & Co.*); *T. M. Eastham* (*William Charles Crocker*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 271**

DISMISSAL OF ACTION FOR WANT OF PROSECUTION: NOTIFICATION OF CHANGE OF SOLICITORS SERVED WITH SUMMONS FOR DISMISSAL

Krakauer *v.* Katz

Denning and Romer, L.JJ. 12th January, 1954

Appeal from Croom-Johnson, J.

In 1941 the plaintiff served on the defendant a writ claiming damages for breach of contract to which appearance was entered on the defendant's behalf by a firm of solicitors. The plaintiff took no further steps in the action until October, 1953, when his

solicitors wrote to the defendant stating that it was proposed to revive the action. The defendant then went to new solicitors, who filed notice of change in the Central Office and at the same time issued a summons to dismiss the action for want of prosecution. In so acting they were in error, since under R.S.C., Ord. 7, r. 2 (1) and (6), a copy of the notice ought to have been served on the plaintiff's solicitors before the summons was issued. No point was taken on this irregularity before the master, who dismissed the action for want of prosecution. Croom-Johnson, J., reversed the master's decision. On appeal, the defendant asked the court to admit in evidence certain further affidavits filed in support of the defendant's application and in answer to affidavits filed on behalf of the plaintiff which had been read at the hearing before Croom-Johnson, J. The judge at the time asked the defendant's counsel whether he wished for an adjournment to answer the plaintiff's evidence, but counsel then stated that he did not want to answer this evidence. On the appeal he sought to adduce further evidence, contending that on an interlocutory matter an appellant had a right to adduce such evidence.

DENNING, L.J., said that a defendant had no such right as was alleged to adduce further evidence by affidavit on an interlocutory matter, but it was a matter for the discretion of the court whether to admit the evidence, and here it would not be right to let counsel go back on the position he had taken. On the appeal, he said that by analogy with the Statute of Limitations if a plaintiff allowed an action to go to sleep for six years the court in its discretion would usually dismiss the action for want of prosecution, unless the plaintiff could show good reason why he should be allowed to go on with it. In the circumstances of this case the plaintiff should not be allowed to proceed with the action. As no point was taken before the master with regard to the irregularity resulting from the non-compliance with R.S.C., Ord. 7, r. 2 (1) and (6), it was not open to the plaintiff to avail himself of this irregularity on appeal. Order 70, r. 1, showed that non-compliance with the rules did not render the proceedings void, but they would be dealt with as the court thought right.

ROMER, L.J., agreed. Appeal allowed.

APPEARANCES: *John Marnan* (*Simmons & Simmons*); *H. Lester* (*Charles Caplin & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 278

BUILDING REGULATIONS: FLAT ROOF UNDER CONSTRUCTION: APPLICABILITY OF REGULATIONS ON HANDHOLD AND FOOTHOLD

Montgomery *v.* A. Monk & Co., Ltd.

Somervell and Birkett, L.JJ., and Vaisey, J.

18th January, 1954

Appeal from a judgment at Liverpool Assizes.

Regulation 97 of the Building (Safety, Health and Welfare) Regulations, 1948, provides: "If the special nature or circumstances of any part of the work render impracticable compliance with the provisions of these regulations, designed to prevent the fall of any persons engaged on that part of the work, then those provisions shall be complied with so far as practicable, and except for persons for whom there is adequate handhold and foothold, either there shall be provided adequate safety nets or safety sheets or there shall be available safety belts or other contrivances which will so far as practicable enable such persons who elect to use them to carry out the work without risk of serious injury." The plaintiff, a workman in the employ of the defendants, while engaged in erecting a flat roof over the defendants' premises, by placing concrete tiles on concrete cross runners, stepped backwards and fell over the edge of the roof, a distance of some 18 feet, and sustained injury. He could have safely stepped on to the tiles already laid in place. He claimed damages, alleging breaches of the Building (Safety, Health and Welfare) Regulations, 1948, and in particular of reg. 30, which deals with openings in roofs, floors and walls; alternatively, that, if the special circumstances of the work rendered compliance with those regulations impracticable, reg. 97 applied, and that so far as practicable the safety precautions mentioned in that regulation should have been taken. The trial judge dismissed the action. The plaintiff appealed.

SOMERVELL, L.J., said that though the work was at a height, it was not an unsafe place because those working might meet with an accident if they did not remember that there was an edge off which they might fall. The plaintiff had relied on a number of regulations which were inapplicable, and had further contended that if reg. 30 was inapplicable, reg. 97 came into effect. It appeared that reg. 30 did not apply to the roof in the present case; its words were concerned with openings in a roof and not with its construction. In effect, none of the regulations applied at all, so that it was not a case where *prima facie* there were regulations which had to be modified by the operation of reg. 97. The appeal failed.

BIRKETT, L.J., and VAISEY, J., agreed. Appeal dismissed.

APPEARANCES: *E. Wooll*, Q.C., and *A. D. Pappworth* (*Mawby, Barrie & Letts*, for *Silverman & Livermore*, Liverpool); *F. Atkinson*, Q.C., and *Jacques Antelme* (*Laces & Co.*, Liverpool, for *James Chapman & Co.*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 288

CHANCERY DIVISION

COMPANY: VOLUNTARY WINDING UP: POWER TO DIRECT PUBLIC EXAMINATION OF DIRECTOR

***In re* Campbell Coverings, Ltd. (No. 2)**

Wynn Parry, J. 11th January, 1954

Adjourned summons.

The Companies Act, 1948, provides by s. 270: "(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person . . . the court may, after consideration of the report, direct that that person . . . shall attend before the court on a day appointed by the court for that purpose and be publicly examined . . ." By s. 307: "(1) The liquidator or any contributory or creditor may apply to the court . . . to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court." In the course of the voluntary liquidation of a company, the liquidator came to suspect that one of the directors had committed a fraud. He reported the matter, pursuant to s. 334 (2) of the Companies Act, 1948, to the Director of Public Prosecutions, who referred the matter to the Board of Trade under s. 334 (3), under which subsection an order was made conferring on an assistant official receiver the powers conferred in a compulsory winding up to make an investigation. The official receiver made an investigation and presented a report. He applied under s. 334 (3) for an order for the public examination of the director in question, pursuant to s. 270 (1). Roxburgh, J., refused to make an order, and his decision was affirmed on appeal, though on a different ground. In dismissing the appeal, Evershed, M.R. (with whom Denning and Romer, L.JJ., agreed), disapproved the view of Roxburgh, J., that, to found jurisdiction for making an order under s. 270 (1) in a voluntary winding up, there must have been a "further report" by the official receiver under s. 236 (2). He further stated that it was his view, as at present advised, that there would be jurisdiction to make the order prayed on an application under s. 307 (1) by one of the persons therein specified; see [1953] Ch. 488. The liquidator (being one of such persons) accordingly took out a summons under that subsection, asking for similar relief and, on the dismissal of the summons by the registrar, moved the court to discharge the registrar's order.

WYNN PARRY, J., said that the reasoning of Evershed, M.R., was such that it ought to be followed unless a further investigation showed some reason to the contrary. None of the cases cited by the registrar supported the contention that s. 270 (1) was not applicable in a voluntary liquidation because there could be no further report under that procedure. It appeared to have been assumed in argument in *In re 1897 Jubilee Sites Syndicate* [1899] 2 Ch. 204 and *In re Medical Battery Company* [1894] 1 Ch. 444, and that assumption was probably responsible for a statement to that effect appearing in the 12th ed. of Buckley on the Companies Acts, at p. 568, which must be considered wrong, in view of Evershed, M.R.'s disapproval to that extent of Roxburgh, J.'s judgment. Section 307 (1) was perfectly clear in its terms, and, as Evershed, M.R., had said, it could not be supposed that steps would have to be taken in a voluntary winding up which could only be taken in a compulsory winding up. Accordingly, the registrar's order must be discharged and the official receiver's report must be submitted for the consideration of the court, so that a decision could be made whether or not to order a public examination. Order accordingly.

APPEARANCES: *D. Buckley* (*Clifford-Turner & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 204

ESTATE DUTY: ANNUITY CHARGED ON WHOLE ESTATE: BASIS OF VALUATION

Westminster Bank, Ltd. *v.* Inland Revenue Commissioners

Harman, J. 15th January, 1954

Adjourned summons.

A testator who died in 1947, by his will, directed his executors to appropriate a fund to satisfy an annuity payable to his wife under a separation deed made in 1926. There were at all times sufficient funds to satisfy the annuity, but no appropriation had been made, as the annuity was a charge on the whole estate. A long correspondence took place with the Estate Duty Office regarding the sum to be deducted as representing the liability constituted by the annuity in computing the principal value of the estate, the following suggestions being made: (1) £11,819, being the cost of a British Government annuity; (2) £11,500, said by the office to be the cost of such an annuity on the basis of the price of Consols at the death of the testator; (3) £10,800, being the cost of purchasing an annuity from a leading life insurance company, and (4) £9,750, a sum suggested by the office "to avoid further correspondence." No agreement having been reached, a summons was taken out to have the matter decided.

HARMAN, J., said that the annuitant, whose claim was not under the will, was not bound to take a lump sum or an appropriated sum, or to accept anything less than the whole estate as her security. The case, therefore, differed from those dealing with annuitants under wills. There had to be a valuation, but it was very artificial, as there was no right to force a lump sum on the annuitant. If she was recalcitrant, and the executors and beneficiaries desired to wind up the estate, it was quite possible that on an application to the court an order might be made giving her the best security she could have for her annuity, in which case she would have no cause for complaint. The proper measure of the burden on the estate was the cost of procuring the best security, short of preserving the whole estate during her lifetime; that seemed to be an annuity from the National Debt Commissioners based on the Government tables. That view was supported by *In re Castle* [1916] W.N. 195 and *Ford* v. *Batley* (1853), 17 Beav. 303. He would, accordingly, declare that the sum in dispute was the cost of a British Government annuity at the date of death. Declaration accordingly.

APPEARANCES: *N. E. Mustoe*, Q.C., and *G. B. Graham* (*Griffinhoofe & Brewster*); *Sir A. L. Ungoed-Thomas*, Q.C., and *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 242**

QUEEN'S BENCH DIVISION

EVIDENCE: HEARSAY: LIBEL: STATEMENTS AT PUBLIC MEETINGS: TELEPHONE MESSAGES

Jozwiak *v.* Sadek and Others

Ormerod, J. 4th December, 1953

Action.

The plaintiff sued the author of an article in a newspaper, the *Polish Daily*, and the proprietors, the editor, the printers and publishers of the newspaper for damages for libel. The article, which on the face of it was fiction, told of the suicides of two people who had hanged themselves because of financial difficulties, and it suggested that their difficulties had been caused indirectly by the actions of a man who was the chairman of an association. There had in fact been two suicides in those circumstances in the Polish community some time before the article appeared. At that time the plaintiff was, and still remained, the chairman of an association in the Polish community for bringing together members of the community for business reasons. The plaintiff alleged that the libel was intended to refer to him as the person responsible for the financial downfall and suicide of those two persons. The question was whether or not the person referred to in the article would be identified as the plaintiff in the minds of any persons knowing the circumstances. Counsel for the plaintiff sought to tender evidence of statements made at public meetings of the Polish community to show that persons present at those meetings identified the plaintiff with the individual referred to in the article; and also evidence of anonymous telephone messages accusing him of being a murderer which the plaintiff had received after the publication of the articles. Counsel for the defendants objected that such evidence was hearsay and therefore inadmissible.

ORMEROD, J., said that on the authority of *Cook* v. *Ward* (1830), 4 M. & P. 99, *Du Bost* v. *Beresford* (1810), 2 Camp. 511, and also *Hough* v. *London Express Newspaper, Ltd.* [1940] 2 K.B. 507, and on the application of the ordinary principles of evidence, he felt that he ought to admit the evidence of statements made at the meetings. If that were so he failed to see how he was extending the principle if he also held that evidence of telephone conversations to the plaintiff, in which similar statements were made, was admissible in evidence. The evidence might be of no great value, and the jury would have to be warned to treat it with caution. Evidence admitted.

APPEARANCES: *H. P. J. Milmo* (*H. Davis & Co.*); *H. Heathcote-Williams*, Q.C., and *L. I. Stranger-Jones* (*George & George*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 275**

LEEDS ASSIZES

MINE: RECONSTRUCTION OF DISUSED ROADWAY: WORKMAN INJURED: BREACH OF STATUTORY DUTY

Wraith *v.* National Coal Board

Glyn-Jones, J. 19th December, 1953

Action.

The plaintiff was employed by the defendants in their mine in the reconstruction of a disused roadway which had fallen into disrepair so that over much of its length there had been falls of roof which had almost buried the crumpled steel arches which had formerly supported the roof and there was an almost continuous cavity in the roof. The system of work was to clear a short length of roadway of debris and then fix a new arch-girder. Above the new arch-girder, and projecting about 18 inches to 2 feet beyond it, were placed pieces of timber which protected a workman in the roadway from a fall of roof from immediately above him. The workmen next cleared the roadway sufficiently to make room for the next arch-girder, which was placed about 3 feet from the first, and then the old distorted arch or arches, which by this time carried no weight, were removed. While the plaintiff was engaged in clearing debris before removing one of the old arches, a large stone fell from the roof about 6 or 7 feet from the last new arch-girder and rolled on to his hand which was crushed. The plaintiff sued the defendants for breaches of ss. 49, 51 and 52 (1) of the Coal Mines Act, 1911, and for negligence at common law. By the Coal Mines Act, 1911, s. 49: "The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel on or work in any travelling road or working place which is not so made secure." Section 51: "Where the work of erecting supports of the roof and sides of working places is done by the workmen employed therein, a sufficient supply of timber or other materials suitable for supports shall be kept at or within 10 yards of every working place where, in pursuance of this Act, supports are required to be erected . . ." Section 52 (1): "In any part of a mine where any work is being carried out which necessitates the removal of roof supports, temporary supports shall, in all cases, be set so as to secure the safety of the persons employed."

GLYN-JONES, J., held that there was no evidence of negligence at common law; he said, with regard to the alleged breaches of statutory duty, that if a roadway had fallen into disrepair because it was not used and was no longer needed, it ceased to be a roadway within the meaning of s. 49. In the present case, only so much of it as had been reconstructed became a roadway, and there was, therefore, no travelling road at the point where the stone fell, and the Board were not under a duty to keep the roof and sides of a disused roadway in repair. Section 49 drew a distinction between a roadway and a working place and, although the roof was not secure, the place where the plaintiff was injured was not a working place; a roadway did not become at any given point a working place merely because at that place men were employed to repair it. Section 49 did not in the circumstances impose on the defendants any duty to make the roof secure, as the section permitted workmen to be sent to a road or place which was insecure for the purpose of repairing it; and he agreed with the *dictum* on this matter of Lord Asquith of Bishopstone in *Stapley* v. *Gypsum Mines, Ltd.* [1953] 3 W.L.R. 279, 293. If he were wrong on that finding and the defendants were in breach of s. 49, the burden under s. 102 (8) of the Act rested on them to prove that it was not reasonably practicable to make the roof secure, and the defendants had not on the evidence discharged that burden. The circumstances contemplated in s. 51 were such as existed when colliers who worked in the getting of coal at the coal face were required to put in

props, and even if it were proved (which it had not been) that there was not a sufficient supply of timber within 10 yards of the working place, it was doubtful whether that section had any application to repair work; but, even if it did apply, he was not satisfied that there had been any breach. The work was not such as necessitated the removal of roof supports under s. 52 (1), as when the time came for the removal of the old arches they were no longer serving as roof supports and temporary supports were not required. If (contrary to the above findings) there had been a breach of any statutory duty by the defendants, no material responsibility should be allocated to the plaintiff for his breach of duty to withdraw from the working place under reg. 8 of the Coal Mines General Regulations, 1913. Judgment for the defendants.

APPEARANCES: *G. R. Hinchcliffe*, Q.C., and *R. Withers Payne* (*Raley & Pratt*, Barnsley); *Geoffrey Veale*, Q.C., and *A. B. Boyle* (*C. M. H. Glover*, Doncaster).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 264

CRIMINAL LAW: ATTEMPT TO COMMIT OFFENCE: POSSESSION OF ILLEGALLY PRICED TICKETS: INTENTION TO ATTACH TICKETS TO MEAT

Hope *v.* Brown

Lord Goddard, C.J., Byrne and Parker, JJ. 21st January, 1954

Case stated by Wigan justices.

The manager of a butcher's shop, having prepared meat for delivery to customers, placed a ticket on each package of meat specifying the correct price in accordance with the Meat (Prices) (Great Britain) Order, 1952. In a drawer in the shop he placed another set of tickets each relating to one of the packages, but bearing a price in excess of that permitted by the order. The manager admitted that before the meat was delivered the tickets in the drawer would be substituted for those originally attached to the packages. He was charged with attempting to commit an offence against the Defence (General) Regulations, 1939, and the Order of 1952. The justices dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that the question was whether the defendant could be convicted of an attempt to sell meat in excess of the maximum price. He had merely formed the intention to commit an offence, and his acts were only those preparatory to the commission of that offence, which did not constitute an attempt. Taking into consideration the statement of Parke, B., in *R.* v. *Eagleton* (1855), Dears. C.C. 376, 515, at p. 538, "Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are," the preparation of the false tickets and putting them in the drawer were too remote. No doubt the charge had been preferred because of *Gardner* v. *Akeroyd* [1952] 2 Q.B. 743, but there the false tickets had already been applied to the meat. In the present case the enforcement officers had struck too soon, and the appeal failed.

BYRNE and PARKER, JJ., agreed. Appeal dismissed.

APPEARANCES: *J. P. Ashworth* (*Treasury Solicitor*); *J. Newey* (*Gregory, Rowcliffe & Co.*, for *Frank Platt & Fishwick*, Wigan).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 250

PUBLIC HEALTH: COLLECTION OF RAGS: WHETHER GOLDFISH AN "ARTICLE"

Daly *v.* Cannon

Lord Goddard, C.J., Byrne and Parker, JJ.

20th January, 1954

Case stated by Essex justices.

By s. 154 (1) of the Public Health Act, 1936: "No person who collects or deals in rags, old clothes or similar articles shall—(*a*) in or from any shop or premises used for, or in connection with, the business of a dealer in any such articles as aforesaid, or (*b*) while engaged in collecting any such articles as aforesaid, sell or deliver, whether gratuitously or not, any article of food or drink to any person, or any article whatsoever to a person under the age of fourteen years." The appellant, the chief sanitary inspector for Ilford, preferred an information against William James Cannon, charging that he, "being a person who collected rags and was then engaged in collecting such articles in a certain street called Uphall Road in the Borough of Ilford . . . did deliver a certain article, namely, a goldfish to *L. C.* . . . the said *L. C.* being a person under the age of fourteen years contrary to the Public Health Act, 1936, s. 154. . . ." The facts alleged were proved. The justices, being of the opinion that a live goldfish was not an article within the meaning of s. 154 of the Public Health Act, 1936, dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that s. 154 appeared in a part of the Act headed "Prevention, notification and treatment of disease," the intention being to prevent infected articles being passed from hand to hand; it was not directed to such matters as preventing the receiving of stolen goods. A considered decision on the question had been given by the stipendiary magistrate at West Ham and appeared in the *Justice of the Peace* for 10th January, 1953; he had decided that a goldfish was not an article within the meaning of the section, and all the members of the court thoroughly agreed with his reasons. This was a penal section, and if there was any ambiguity, the construction most favourable to the accused should be adopted. Nobody would ordinarily call a goldfish an article. In *R.* v. *Armagh Justices* [1931] N.I. 209 it was said that "article" was applicable to something inanimate, while "thing" could include animate and inanimate objects. The question was not easy, but the construction which was against the imposition of a penalty should be preferred; the justices' decision was right.

BYRNE and PARKER, JJ., agreed. Appeal dismissed.

APPEARANCES: *A. E. Holdsworth* (*K. F. B. Nicholls*, Town Clerk, Ilford).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 261

PRACTICE DIRECTION

COSTS AGAINST LEGALLY AIDED PERSONS

Lord Goddard, C.J., and Evershed, M.R. 1954

Where an order for costs is made against an assisted person; by reg. 17 and in accordance with s. 2 (2) (*e*) of the Act a judge is required to assess the amount which the assisted person is to pay and may give a direction for that amount to be payable by instalments. The successful litigant in such a case may thereafter make a subsequent application to the court under a proviso to reg. 17 for the order to be varied, on the grounds that there has been a change in the assisted person's circumstances. Where the judge at the trial orders the assisted person to pay, whether in one sum or by instalments, a sum which must be less than the full amount of the costs, the order should direct that the costs are not to be taxed and judgment be entered without further order for the amount of costs which has then been determined; otherwise the judgment must direct taxation and this will involve the successful party in extra and unnecessary expense. If the judge orders payment by instalments, he should be asked also to direct that on failure to pay any instalments the whole sum should become due; otherwise there is no means of enforcing payment until the time has elapsed for the whole of the instalments to be paid owing to the rule that there can be only one execution on a judgment. So, supposing an order is made for £5 a month for six months, if a default is made in paying the first or second instalment no execution could issue until the six months had elapsed. Fresh forms for the drawing up of orders to embody these directions are being prepared.

GODDARD, C.J.
EVERSHED, M.R.

[NOTE: This direction refers to the Legal Aid and Advice Act, 1949, s. 2 (2) (*e*), and to the Legal Aid (General) Regulations, 1950 (S.I. 1950 No. 1359), reg. 17.]

The UNITED LAW SOCIETY announce the following debates for February, 1954: Monday, 8th (joint debate with the Inns of Court Students' Union): Gramophone record—libel or slander? "That in the opinion of this House the second decision of the Court of Appeal in *Chicken* v. *Ham* was wrongly decided." (See the report of this case when it went to the Lords—"Uncommon Law," by Sir Alan Herbert, reprinted in 11 GLIM 3.) Monday, 15th (debate): "That in the opinion of this House the power of the trade unions has increased, is increasing, and ought to be diminished." Monday, 22nd (debate): "That this House views with dissatisfaction the present methods and procedure for dealing with juvenile delinquency."

SURVEY OF THE WEEK

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Abortion Bill [H.L.] [26th January.
To amend the law relating to abortion.

Read Second Time :—

Brighton Corporation Bill [H.L.] [27th January.
Mersey Docks and Harbour Board Bill [H.L.] [27th January.
Pests Bill [H.L.] [26th January.
Stroudwater Navigation Bill [H.C.] [27th January.
Summary Jurisdiction (Scotland) Bill [H.L.] [26th January.
Tees Conservancy Bill [H.L.] [28th January.
Tees Conservancy (Deposit of Dredged Material) Bill [H.L.] [28th January.
Tyne Improvement Bill [H.L.] [28th January.
Warehousemen, Clerks and Drapers' Schools Bill [H.L.] [28th January.

Read Third Time :—

Navy, Army and Air Force Reserves Bill [H.C.] [28th January.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Civil Defence (Electricity Undertakings) Bill [H.C.] [28th January.
To enable grants to be made in respect of measures taken to secure the due functioning of electricity undertakings in Great Britain in the event of hostile attack.

Royal Irish Constabulary (Widows' Pensions) Bill [H.C.] [28th January.
To provide for the payment of supplementary allowances and of pensions to persons who are or have been widows of certain former members of the Royal Irish Constabulary.

Read Second Time :—

Baking Industry (Hours of Work) Bill [H.C.] [25th January.
Development of Inventions Bill [H.C.] [26th January.
Landlord and Tenant Bill [H.C.] [27th January.
Long Leases (Scotland) Bill [H.C.] [26th January.
Merchant Shipping Bill [H.C.] [28th January.
Slaughter of Animals (Amendment) Bill [H.C.] [29th January.

Read Third Time :—

Currency and Bank Notes Bill [H.C.] [28th January.
Licensing (Seamen's Canteens) Bill [H.L.] [28th January.
Rights of Entry (Gas and Electricity Boards) Bill [H.C.] [29th January.

B. Debates

On the second reading of the **Landlord and Tenant Bill** Sir David Maxwell Fyfe said the Bill contained provisions for permanent legislation to replace earlier statutes. The object of Pt. I of the Bill was to give to a ground lessee who was living in the house the protection of the Rent Acts. At present he was excluded because his rent was usually less than two-thirds of the rateable value. Under the Bill he would stay on as a statutory tenant when his lease ended, provided the house was not too large to be within the ambit of the Rent Acts. But the lease would not end automatically—it would run on until the landlord gave not less than six months' notice terminating it. The notice would have to explain to the tenant his rights under Pt. I of the Act and the landlord's proposals for the new statutory tenancy—unless he intended to apply to the county court for possession, in which case he would have to give the tenant notice of that fact.

The grounds for an order for possession would be those in the Rent Acts and, in addition, that the landlord required the premises for *immediate* redevelopment. Once the statutory tenancy had started, however, this last ground for possession would not be available to the landlord. The terms of the statutory tenancy such as repairs and rent would be agreed between the parties with a right to go to the county court in the event of dispute. Under a ground lease a tenant was fully liable for repairs, but the Bill would relieve the tenant entirely from his liability for dilapidations at the end of the lease. The landlord could then, however, carry out what were called "initial repairs" and he would be able to recover the cost of these repairs from the tenant to the extent that they had become necessary as a result of the tenant's failure to carry out his obligations under the ground lease. The tenant could pay either by a lump sum or by instalments. The degree of repair needed would, if disputed, be settled in the county court, but in any event was limited to such repair as would put the premises into a state of "good repair." This standard would usually be lower than that required by the covenants in the ground lease.

The rent to be paid would be related to the repairing and other covenants of the statutory tenancy itself and to the condition of the house after the initial repairs had been done. If there was no agreement, then the county court would have power to fix a reasonable rent.

Part I also dealt with sub-tenants by reversing, with certain exceptions, the *Knightsbridge* judgment. In most cases the sub-tenant would continue to be protected against the head landlord after the ground lease had expired.

Part II of the Bill applied to all occupying business and professional tenants, whatever their type of tenancy, whether they paid a ground rent or a rack-rent, and whether the tenancy was for a term of years or was a weekly or other periodical tenancy. The Landlord and Tenant Act, 1927, had fallen short of what Parliament had intended. The Government had decided that it was wrong to keep adherent goodwill as the essential condition for compensation, and it had also been decided to place the emphasis on renewal of the lease rather than on compensation. Simply put, the new scheme was that, if at the end of the tenancy the landlord needed to occupy the premises himself for his own business, or to pull them down and rebuild, the tenant would have to go. But, if the landlord was going to relet the premises anyhow, then the sitting tenant would have a prior right to remain, provided he had been a satisfactory tenant. If he stayed on, however, he would have to pay a fair and up-to-date rent. If the parties could not agree on fair terms, then the county court or the High Court could fix the terms for them.

The scope of this Part of the Bill was wider than the 1927 Act: it would cover professional men and bodies such as trade associations, charities and learned societies. If a new tenancy was refused, then the tenant would become entitled to compensation. This would be the amount of the rateable value, or, if the tenant's business had continued in the premises for fourteen years or more it would be twice the rateable value. Broadly speaking, the parties could contract out of the compensation provisions if the lease was for less than five years, but there could be no contracting out of the security provisions. These provisions would not apply to agricultural holdings or to licensed premises, which were already covered by statutory codes. As to premises consisting of sub-let flats or rooms, cl. 41 (1) (*c*) contained an exception, but the question where this began and ended, he thought, should be left to the committee stage.

Part III of the Bill dealt with compensation for improvements. It had been decided not to extend the provisions to improvements in residential premises, but the existing provisions of the 1927 Act would be improved in various ways suggested by the leasehold committee.

Under Pt. IV of the Bill it was provided that, so far as Pt. I was concerned, the Crown should be in the same position as it was in under the Rent Acts, i.e., the tenant of the Crown was not protected but the sub-tenant was. The Crown would also be bound by Pt. II of the Bill, but certain distinctions were drawn between Government departments on the one hand and the Crown Commissioners, etc., on the other. The former would be able to refuse a new tenancy, where the Minister certified that to be necessary. Local authorities and certain other public bodies could also apply for the Minister's certificate. Government departments would not, however, receive any special treatment as regards compensation or as to notice.

Clause 49 of the Bill extended the scope of the Leasehold Property (Repairs) Act, 1938. Clause 50 widened the scope of s. 84 of the Law of Property Act, 1925, regarding obsolete restrictive covenants and gave the county court concurrent jurisdiction with the High Court. [27th January.

C. QUESTIONS

PENSIONS APPEALS TRIBUNALS

Brigadier SMYTH stated that there was no provision for an appeal by the Minister against an assessment fixed by a pensions appeal tribunal for war disablement. [28th January.

STATUTORY INSTRUMENTS

Aerated Waters Wages Council (Scotland) Wages Regulation Order, 1954. (S.I. 1954 No. 56.) 5d.

Bath-Cheltenham-Evesham-Coventry-Leicester-Lincoln Trunk Road (Bishop's Cleeve By-Pass) Order, 1954. (S.I. 1954 No. 65.)

Consular Conventions (Kingdom of Greece) Order, 1953. (S.I. 1953 No. 1454.)

Dunfermline Water Order, 1954. (S.I. 1954 No. 45 (S. 14).)

Exchange of Securities Rules, 1954. (S.I. 1954 No. 87.) 5d.

Exeter-Leeds Trunk Road (Stone Diversion) Order, 1954. (S.I. 1954 No. 54.)

Fats and Cheese (Rationing) (Amendment) Order, 1954. (S.I. 1954 No. 57.)

Filey Water Order, 1953 (S.I. 1953 No. 1937.) 5d.

Food (Licensing of Establishments) (Amendment) Order, 1954. (S.I. 1954 No. 58.)

Food Rationing (General Provisions) (Amendment) Order, 1954. (S.I. 1954 No. 74.)

Foreign Compensation (Financial Provisions) Order, 1954. (S.I. 1954 No. 63.)

Grimsby, Cleethorpes and District Water Board Order, 1954. (S.I. 1954 No. 49.) 5d.

London-Norwich Trunk Road (Pesterford Railway Bridge) Order, 1954. (S.I. 1954 No. 53.)

London Traffic (Prescribed Routes) (No. 2) Regulations, 1954. (S.I. 1954 No. 76.)

Merchant Shipping (Certificates of Competency as A.B.) (Canada) Order, 1954. (S.I. 1954 No. 64.)

National Health Service (Medical Auxiliaries) Regulations, 1954. (S.I. 1954 No. 55.) 5d.

National Health Service (Medical Auxiliaries) (Scotland) Regulations, 1954. (S.I. 1954 No. 77 (S. 18).) 5d.

Draft **National Insurance** (Married Women) Amendment Regulations, 1954. 6d.

Ogwen Water Order, 1954. (S.I. 1954 No. 60.)

Police (Scotland) Amendment Regulations, 1954. (S.I. 1954 No. 75 (S. 17).) 6d.

Retention of Cables, Main and Pipes under Highways (Oxfordshire) (No. 1) Order, 1954. (S.I. 1954 No. 48.)

Retention of Mains and Pipe under Highways (Cumberland) (No. 1) Order, 1954. (S.I. 1954 No. 66.)

Sea-Fishing Industry (Fishing Nets) Order, 1954. (S.I. 1954 No. 78.) 5d.

Stopping up of Highways (Derbyshire) (No. 1) Order, 1954. (S.I. 1954 No. 67.)

Stopping up of Highways (Durham) (No. 1) Order, 1954. (S.I. 1954 No. 52.)

Stopping up of Highways (London) (No. 1) Order, 1954. (S.I. 1954 No. 69.)

Stopping up of Highways (Pembrokeshire) (No. 1) Order, 1954. (S.I. 1954 No. 51.)

Stopping up of Highways (Surrey) (No. 1) Order, 1954. (S.I. 1954 No. 68.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

BOOKS RECEIVED

The Post Office London Directory for 1954. 155th Annual Edition. pp. xxxv and 2860. London: Kelly's Directories, Ltd. £5 net.

Staples on Back Duty. Sixth Edition. By RONALD STAPLES, Editor of "Taxation," and PERCY F. HUGHES, A.S.A.A., F.C.I.S. 1953. pp. (with Index) 178. London: Gee & Co. (Publishers), Ltd. £1 1s. net.

Advocacy, Its Principles and Practice. By R. K. SOONAVALA, B.A. (Hons.), LL.B., Civil Judge, Bombay Judicial Service. 1953. pp. xii and (with Index) 957. Bombay: N. M. Tripathi, Ltd. Ordinary edition £2 10s. net. De luxe edition £2 15s. net.

The Law of Trusts. Sixth Edition. By GEORGE W. KEETON, M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1954. pp. lxviii and (with Index) 499. London: Sir Isaac Pitman & Sons, Ltd. £2 5s. net.

Theobald on the Law of Wills. Eleventh Edition. By J. H. C. MORRIS, D.C.L., of Gray's Inn, Barrister-at-Law. 1954. pp. lxxxvi and (with Index) 759. London: Stevens and Sons, Ltd. £3 15s. net.

Back Duty Manual. By A. J. ROPER, B.Sc. (Hons.), late H.M. Senior Inspector of Taxes, late Inland Revenue Enquiry Branch. 1953. pp. (with Index) 130. London: Butterworth and Co. (Publishers), Ltd. £1 5s. net.

NOTES AND NEWS

Honours and Appointments

Mr. GERALD BISHOP, clerk of Kent County Council, has been appointed Clerk of the Peace and Clerk of the Police Authority for the County.

Mr. REX GEORGE GODDARD has been appointed an Assistant Official Receiver for the Bankruptcy Districts of the County Courts of Reading, Banbury, Newbury and Oxford, and for the County Courts of Aylesbury, Brentford, Chelmsford, Edmonton, Hertford, St. Albans and Southend, as from 28th January.

Mr. RICHARD HILES, Deputy Town Clerk of Bath, has been appointed Town Clerk of Bury St. Edmunds, in succession to Mr. MAURICE JACK HAYWARD GIRLING, who has been appointed Town Clerk of Tunbridge Wells.

Mr. ALEC HENRY HORLER has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Bristol, Bath, Bridgwater, Cheltenham, Frome, Gloucester, Swindon and Wells, and also for the Bankruptcy District of the County Courts of Exeter, Barnstaple, Taunton and Torquay, as from 1st February.

Mr. JACK DAVID SCOTT, Deputy Clerk of the Peace, has been appointed Senior Assistant Solicitor to Kent County Council.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On 3rd December, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of THOMAS PERCY HASELDINE, of "Woodpeckers," West Chiltington, Sussex, be struck off the Roll of Solicitors of the Supreme Court and that he do pay to the complainant his costs of and incidental to the application and inquiry. The said Thomas Percy Haseldine appealed from the said order, and the appeal was heard by the Divisional Court (Queen's Bench Division) on 26th January, 1954, when the court ordered that the appeal be dismissed with costs to be paid by the said Thomas Percy Haseldine to the Registrar of Solicitors and to the complainant or their respective solicitors.

DEVELOPMENT PLANS

PRESTON DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Preston. The plan, as approved, will be deposited in the council offices for inspection by the public.

DEWSBURY DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Dewsbury. The plan, as approved, will be deposited in the council offices for inspection by the public.

GLOUCESTER DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Gloucester. The plan, as approved, will be deposited in the council offices for inspection by the public.

HUNTINGDONSHIRE DEVELOPMENT PLAN

On 31st December, 1953, the Minister of Town and Country Planning approved with modifications the above development plan. A certified copy of the development plan as approved by the Minister has been deposited at the places named below: The County Planning Office, Walden House, Huntingdon; Borough Council Offices, Huntingdon; Town Hall, Godmanchester, Hunts; District Council Offices, Old Fletton, Hunts; District Council Offices, Ramsey, Hunts; Urban District Council Offices, Huntingdon Street, St. Neots; Norman Cross Rural District Council Offices, 43A Priestgate, Peterborough; The Surveyor, Booster Station, Yaxley, Hunts; Rural District Council Offices, Priory Road, St. Ives, Hunts; Rural District Council Offices, 32A New Street, St. Neots; Rural District Council Offices, Montagu House, Huntingdon. The copies of the plan so deposited will be open for inspection, free of charge, by all persons interested, between the hours of 9 a.m. and 4 p.m. daily Mondays to Fridays, and between the hours of 9 a.m. and 12 noon Saturdays. The plan became operative as from 21st January, 1954, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan he may within six weeks from 21st January, 1954, make application to the High Court.

EXMOOR NATIONAL PARK (DESIGNATION) ORDER

The Exmoor National Park (Designation) Order, signed on 27th January by the Chairman of the National Parks Commission, will be submitted in due course to the Minister of Housing and Local Government for confirmation. The area covered by the order comprises a total of about 265 square miles of which 77 are in Devon and 188 in Somerset. A copy of the order, together with a map showing the boundaries, will be on view in the course of the next few days in all the local authority districts affected by the order, and also at the offices of the National Parks Commission, 3 Chester Gate, Regent's Park, London, S.W.1.

A special university lecture in laws on Criminal Responsibility and Punishment will be given by the Hon. Mr. Justice Devlin, at University College (Eugenics Theatre), Gower Street, W.C.1, at 5 p.m., on Thursday, 4th March, 1954. The chair will be taken by Professor G. L. Williams, Professor of Public Law in the University of London. The lecture is addressed to students of London University and to others interested in the subject. Admission is free and without a ticket.

A special university lecture in laws on Powers and Limits of Congressional Inquiry will be given by Professor T. I. Emerson, LL.B., M.A., Professor of Law at Yale University, at the London School of Economics and Political Science, Houghton Street, Aldwych, W.C.2, at 5 p.m., on Tuesday, 9th March, 1954. The chair will be taken by Professor O. Kahn-Freund, LL.M., Dr. Jur., Professor of Law in the University of London. The lecture is addressed to students of London University and to others interested in the subject. Admission is free and without a ticket.

At the examination for honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the examination committee recommended the following as being entitled to honorary distinction: *First Class*: C. F. Whitehorn. *Second Class* (in alphabetical order): D. J. Binns, LL.B. Sheffield, Irene Bishop, LL.B. London, J. Black, LL.B. London, P. J. Bunker, B.A., LL.B. Cantab., J. D. Hodge, B.A., LL.B. Cantab., D. R. M. Long, E. T. Williams, B.A., LL.B. Cantab. *Third Class* (in alphabetical order): P. M. Baggaley, LL.B. London, S. J. Berwin, LL.B. Leeds, E. Lewis, G. A. Moss, B.A. Oxon., T. J. Mugford, P. H. Pimblett, J. M. Polden, B.A., LL.B. Cantab. The Council have accordingly given a class certificate and awarded to Mr. Whitehorn the Clement's Inn Prize, value £40. The Council have given class certificates to the candidates in the second and third classes. Seventy-nine candidates gave notice for examination.

OBITUARY

MAJOR GEORGE M. BURGES, M.B.E.

Major George Michael Burges, M.B.E., solicitor, of Bristol, died recently. He was admitted in 1929.

MR. C. E. PAGE

Mr. Charles Edward Page, solicitor, of Colchester, died recently, aged 52. He was admitted in 1923.

MR. H. G. RIVINGTON

Mr. Henry Gibson Rivington, solicitor, of Leatherhead, died on 25th January, aged 81.

MR. S. E. WARD

Mr. Septimus Ernest Ward, clerk to Messrs. Fortescue & Sons, solicitors, of Banbury, and subsequently Messrs. Stockton, Sons & Fortescue, has died, aged 67. He was clerk to the Banbury Borough Magistrates for nearly fifty years.

MR. T. H. WARSKETT

Mr. Thomas Horace Warskett, solicitor, of Sheffield, died recently, aged 80. He was admitted in 1917 and had practised in the city for more than thirty years.

SOCIETIES

At the annual general meeting of the WORTHING LAW SOCIETY, held on 29th January, the following officers and members of the committee were elected for the ensuing year: President, Mr. R. V. Stapleton; Vice-President, Mr. W. G. S. Naunton; Hon. Treasurer, Mr. T. E. Bangor-Jones; Hon. Secretary, Mr. H. W. A. Clifford. Committee: Messrs. J. L. Bowron, R. G. Church, F. R. Edis, R. W. Green, J. E. Humphrey, F. A. Sotham and W. J. Wright.

The UNION SOCIETY OF LONDON announce the following subjects for debate in February, 1954 (meetings in the Common Room, Gray's Inn, at 8 p.m.): Friday, 12th: (joint debate with the Hardwicke Society) "That comfort is overvalued." At this meeting the Union Society of London will be the guests of the Hardwicke Society; the meeting will be held in the Common Room, Middle Temple, at 8 p.m. Wednesday, 17th: "That euthanasia should be made legal." Wednesday, 24th: "That this House regrets the present condition of the aristocracy."

Mr. Barnard Burrell Davis, solicitor, of Cannock, has been installed president of WALSALL LAW ASSOCIATION. He is the first Cannock solicitor to hold the office.

Mr. George L. Hall has been appointed chairman of Sheffield and District Branch of the SOLICITORS' MANAGING CLERKS' Association.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).